



March 7, 2000

Lieutenant Arturo Valdez
Central Record Division
McAllen Police Department
1501 Pecan Boulevard
McAllen, Texas 78501

OR2000-0916

Dear Lieutenant Valdez:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134542.

The McAllen Police Department received a request for any incident reports regarding a named person. You claim that the requested information is excepted from public disclosure under sections 552.101 and 552.108 of the Government Code.

First, we note that you have not explained how the provisions of section 552.108 apply to except the requested information from public disclosure as required by section 552.301(e) of the Government Code. Thus, you may not withhold the requested information under section 552.108. *See* Gov't Code § 552.302.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning a certain person. In this case, we believe that the individual's right to privacy has been implicated. Thus, where the named individual is a possible suspect, we conclude that you must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.* Three of the submitted offense reports do not

involved the named individual as a possible suspect. Hence, you may not withhold offense report numbers 95-054981, 96-004205, and 96-017415 under section 552.101.

The three specified offense reports contain information that you must withhold under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, you must withhold the driver's license numbers, license plate numbers, and vehicle identification numbers under section 552.130. The remainder of offense report numbers 95-054981, 96-004205, and 96-017415 must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ljp

Ref.: ID# 134542

Encl. Submitted documents

cc: Mr. Greg Castillo
Investigative Research, Inc.
12001 E. Van Buren
Brownsville, Texas 78520
(w/o enclosures)